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CONVENTION ON THE SUPPRESSION OF ACTS OF NUCLEAR TERRORISM

Draft submitted by the Russian Federation

The States parties to this Convention,

Unconditionally condemning as criminal all acts of nuclear terrorism regardless of where, by whom and for what purposes they are committed,

Guided by the purposes and principles of the Charter of the United Nations and the Convention on the Physical Protection of Nuclear Material of 1980 and the determination to prevent the commission of acts of nuclear terrorism, which may have the gravest consequences and represent a threat to international peace and security,

Taking into account the Declaration on Measures to Eliminate International Terrorism, adopted by the General Assembly in its resolution 49/60 of 9 December 1994,

Noting the importance of cooperation in preventing, suppressing and investigating such acts,

Affirming the need to conduct a policy precluding any concessions to those who commit terrorist acts and that such incidents must be resolved, as far as is practically possible, by peaceful means,

Aware of the importance of developing a reliable system of measures to prevent nuclear terrorism in all its forms and manifestations,

Have agreed as follows:

Article 1

For the purposes of this Convention:

1. "An act of nuclear terrorism" means:

(a) (i) The use or threat of the use of nuclear material, nuclear fuel, radioactive products or waste, or any other radioactive substances, their radioactive properties or a combination of radioactive properties with toxic, explosive or other dangerous properties;

(ii) the use or threat of the use of any nuclear installations, nuclear explosive or radiation-dissemination devices and components thereof or objects of which they are components, including their destruction or the threat of their destruction, as well as the manufacture of home-made nuclear devices, for the purpose of causing death or serious injury to any person or harming his health, causing substantial damage to property or the environment, or compelling a natural or legal person, a group of persons, a State or an international organization to do or to refrain from doing any act;

(b) For the purposes set forth in subparagraph (a), the receipt or alienation without the permission of the competent authorities or through fraud, theft, forcible seizure, appropriation, possession, alteration or the transfer of any nuclear material, nuclear fuel, radioactive products or waste, or any other radioactive substances, any nuclear installations, nuclear explosive or radiation-dissemination devices and components thereof or objects of which they are components belonging to any of the States parties regardless of their location, as well as acts constituting a demand by threat or use of force or by any other form of intimidation for the release or transfer of such material, sources, substances, installations or devices and/or components thereof or objects of which they are components;

(c) Preparing to commit or attempting to commit an act set forth in subparagraphs (a) and (b) as well as any type of participation in committing, preparing or attempting to commit such acts or a threat to commit them.

2. "Nuclear material" means plutonium, except that with isotopic concentration exceeding 80 per cent in plutonium-238; uranium-233; uranium enriched in the isotope 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore-residue; or any material containing one or more of the foregoing;

Whereby "uranium enriched in the isotope 235 or 233" means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature.

3. "Nuclear fuel" means nuclear material or any material capable of producing energy by means of a self-sustaining chain process of nuclear fission.

4. "Radioactive products" mean any radioactive material produced in the process of producing or using nuclear fuel, or any material which has become

radioactive through radiation as a result of the production or use of nuclear fuel, with the exception of radio isotopes which have reached the final stage of manufacture and have thus become suitable for utilization for scientific, medical, agricultural, commercial or industrial purposes.

5. "Radioactive waste" means substances in any aggregate state not subject to further use, materials, goods, instruments, equipment and objects of biological origin in which the level of radionuclides exceeds those established by the standards and regulations of the States parties to the convention on the safety of radioactive waste management.

6. "Radioactive substances" mean any other substances, with the exception of those set forth in paragraphs 2, 3 and 4 of this article which have radioactive properties that are hazardous to human life and health and/or may cause substantial damage to the environment.

7. "A nuclear installation" means:

(a) Any nuclear reactor, including reactors installed on vessels, aircraft or space objects for use as an energy source in order to propel such vessels, craft or objects or for any other purpose;

(b) Any plant used for the production, location, storage, processing, transport and other purposes of nuclear material, nuclear fuel, radioactive products or waste, or any radioactive substances;

(c) A composite of such plants considered as a single production, scientific or other complex.

8. "A nuclear explosive device" means any device capable of bringing about a nuclear chain reaction of explosive fission, for example, a nuclear weapon or a nuclear experimental device.

9. "A radiation-dissemination device" means any device capable of disseminating any type of radioactive materials by any means which pose the danger of contaminating a population and area.

Article 2

1. This Convention shall apply exclusively to acts by specific natural persons (in an individual capacity or as part of non-State groups or other associations) and its scope shall not include the questions of the non-proliferation of nuclear weapons or nuclear threats posed by States, international intergovernmental organizations or other subjects of international law.

2. Nothing in this Convention shall affect the immunity of vessels and aircraft belonging to a State and operated by it for military, customs or police purposes, or of space objects.

Article 3

Each State party shall adopt such measures as may be necessary to establish as criminal offences under its legislation the acts set forth in article 1, paragraph 1, of this Convention and shall make provision for appropriate penalties which take into account the grave nature of those offences.

Article 4

States parties shall cooperate in the prevention of acts of nuclear terrorism, particularly, by:

1. Taking all measures provided for under their legislation to prevent preparations in their respective territories for the commission of offences within or outside their territories, including the taking of measures to prohibit in their territory illegal activities by persons, groups or organizations which encourage, instigate, organize or participate in the commission of acts of nuclear terrorism or help to conceal such offences;

2. Exchanging information in the manner and conditions provided for under article 11 of this Convention and coordinating administrative and other measures taken to prevent the commission of such offences;

3. Adopting all necessary legislative, administrative and technical measures to ensure the physical protection of nuclear material, nuclear fuel, radioactive products or waste, radioactive substances, nuclear installations and nuclear devices as well as protection against illegal or unauthorized access to them by third parties.

Article 5

1. Each State party shall take such measures as may be necessary to establish its jurisdiction over any of the offences set forth in article 1, paragraph 1, of this Convention which are committed:

(a) In its territory or on board a vessel, aircraft or space object registered in that State;

(b) By any of its nationals or, if the State in question deems it advisable, by stateless persons who have their habitual residence in its territory;

(c) In order to compel that State to do or to refrain from doing any act; or

(d) In respect of or against a national of that State or a legal person connected with that State, if the State deems it advisable.

2. Each State party shall also take such measures as may be necessary to extend its jurisdiction over these offences in cases where the alleged offender

is present in its territory and it does not extradite that person in accordance with article 8 of this Convention to any of the States referred to in paragraph 1 of this article.

3. This Convention shall not exclude the exercise of any criminal jurisdiction in accordance with national law.

Article 6

1. Each State party, in the territory of which an offence set forth in article 1, paragraph 1, of this Convention is committed, or in the territory of which an alleged offender is present, shall, in accordance with international law and its legislation, take measures to suppress an act of nuclear terrorism, including coercive measures, detect, expose, detain and take an alleged offender into custody or take any other necessary measures to ensure that person's presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. The State referred to in paragraph 1 of this article shall immediately make a preliminary inquiry concerning the facts in accordance with its legislation and shall promptly report its findings to the States required to establish jurisdiction in accordance with article 5 of this Convention and shall also indicate whether it intends to exercise jurisdiction.

3. Nothing in this Convention shall in any way affect the right of any State party to take the necessary measures referred to in this article with the consent of or in accordance with a request for assistance addressed to that State by a third State, if the offence is committed in the territory of a third State or if the alleged offender is present in the territory of a third State.

4. Nothing in this Convention shall in any way affect the norms of international law relating to the competence of States to exercise jurisdiction in conducting an investigation or taking coercive measures on board vessels which are not flying their flag or on board aircraft which are not registered in those States.

Article 7

1. If a State party in the territory of which an alleged offender is present does not extradite that person, it shall, without any undue delay, submit the case to its competent authorities for the purpose of prosecution and proceedings in accordance with the legislation of that State.

2. Any person in respect of whom proceedings are being carried out in connection with any of the offences set forth in article 1, paragraph 1, of this Convention shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided for such proceedings under the legislation of the State in the territory of which that person is present.

Article 8

1. The offences set forth in article 1, paragraph 1, of this Convention, shall be deemed extraditable offences included in any extradition treaty existing between States parties. States parties shall undertake to include such offences as extraditable offences in all subsequent extradition treaties to be concluded between them.

2. If a State party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State party with which it has no extradition treaty, the requested State may, at its discretion, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 1, paragraph 1, of this Convention. Extradition shall be subject to the other provisions set forth under the legislation of the requested State.

3. States parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 1, paragraph 1, of this Convention as extraditable offences between themselves, subject to the provisions set forth under the legislation of the requested State.

4. Where necessary, the offences set forth in article 1, paragraph 1, of this Convention shall be treated by the States parties for the purposes of extradition as if they had been committed not only in the place in which they occurred but also in some place under the jurisdiction of the State party making the request for extradition.

5. A State party which receives more than one request for extradition from States which have established jurisdiction in accordance with article 5 of this Convention and which takes a decision not to undertake prosecution, shall, in choosing the State to which the alleged offender is to be extradited, duly take into account the interests and obligations of the State party in the territory of which the act of nuclear terrorism was committed.

Article 9

1. States parties shall afford one another the greatest possible assistance in connection with prosecution instituted in respect of the offences set forth in article 1, paragraph 1, of this Convention, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual legal assistance that may exist between them. In the absence of such treaties, States parties shall afford one another assistance in accordance with their domestic legislation.

Article 10

1. Upon the completion of the proceedings connected with an act of nuclear terrorism, if it is considered feasible, any nuclear material, nuclear fuel, radioactive products or waste or any other radioactive substances as well as nuclear installations, nuclear explosive or radiation-dissemination devices, including homemade devices and/or their components or objects of which they are components shall be returned to the State party, to which they belong or which was the State of their origin.

2. If the material, fuel, products, waste, substances, installations, devices, their components or objects of which they are components set forth in paragraph 1 of this article do not belong to any of the States parties, or if none of those States was the State of their origin, a separate decision concerning their use shall be taken after consultations between the States concerned.

Article 11

1. States parties shall exchange information in order to prevent, suppress, uncover and investigate the offences set forth in article 1, paragraph 1, of this Convention and also in order to institute criminal proceedings against and punish persons guilty of committing those crimes. In particular:

(a) A State party shall take appropriate measures in order to inform without delay the other States referred to in article 5 of this Convention or States which, in its opinion, are concerned in respect of the commission of acts of nuclear terrorism as well as preparations to commit such acts about which it has learned, and also to inform, where necessary, international organizations;

(b) Where necessary, the States parties concerned shall exchange information with one another or with international organizations about measures being taken by them to prevent and suppress acts of nuclear terrorism, the reasons underlying those acts, the means to carry them out, the persons who have committed them, and the methods used to prevent and suppress such acts;

(c) Each State party may, at its own discretion, communicate to another State party or international organization any other relevant information.

2. States parties shall take appropriate measures consistent with their domestic legislation to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State party or through participation in an activity carried out for the implementation of this Convention. If States parties provide information to international organizations in confidence, steps shall be taken to ensure that the confidentiality of such information is protected.

3. States parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to domestic legislation or which would jeopardize the security of the State concerned or the

physical protection of nuclear material, nuclear fuel, radioactive products or waste, radioactive substances, nuclear installations, nuclear devices or their components or objects of which they are components.

4. States parties shall inform one another about their competent authorities and liaison points responsible for sending and receiving the information referred to in this article. Such authorities and liaison points must be accessible on a continuous basis.

Article 12

States parties shall conduct, through mutual agreement, consultations with one another directly or with the assistance of international organizations on all questions provided for under this Convention.

Article 13

Nothing in this Convention shall affect the obligations of States parties under the Charter of the United Nations or the rights and obligations of States parties arising from international treaties concluded by them previously or shall be directed against any State.

Article 14

1. In the event of a dispute between two or more States parties concerning the interpretation or application of this Convention, such States parties shall consult with a view to the settlement of the dispute by negotiation, or by any other peaceful means of settling disputes acceptable to all parties to the dispute.

2. Any dispute of this character which cannot be settled in the manner prescribed in paragraph 1 of this article shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In case of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.

3. Each State party may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by either or both of the dispute settlement procedures provided for in paragraph 2 of this article with respect to a State party which has made a reservation to that procedure.

4. Any State party which has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the depositary.

Article 15

1. This Convention shall be open for signature by all States in _____ from _____ 19__ until its entry into force.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. After its entry into force, this Convention will be open for accession by all States.

4. (a) This Convention shall be open for signature or accession by international organizations and regional organizations of an integration or other nature provided that such organization is constituted by sovereign States and has competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention;

(b) In matters within their competence, such organizations shall, on their own behalf, exercise their rights and fulfil the responsibilities which this Convention attributes to States parties;

(c) When becoming party to this Convention, such an organization shall communicate to the depositary a declaration indicating which States are members thereof and which articles of this Convention do not apply to it;

(d) Such an organization shall not hold any vote additional to those of its member States.

5. Instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.

Article 16

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the _____ instrument of ratification, acceptance or approval.

2. For each State ratifying, accepting, approving or acceding to the Convention after the date of deposit of the _____ instrument of ratification, acceptance or approval, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 17

1. A State party may propose amendments to this Convention. The proposed amendment shall be submitted to the depositary, who shall circulate it immediately to all States parties. If a majority of States parties request the depositary to convene a conference to consider the proposed amendments, the depositary shall invite all States parties to attend such a conference to begin not sooner than 30 days after the invitations are issued. Any amendment adopted at the conference by a two-thirds majority of all States parties shall be promptly circulated by the depositary to all States parties.

2. The amendment shall enter into force for each State party that deposits its instrument of ratification, acceptance or approval of the amendment on the thirtieth day after the date on which two thirds of the States parties have deposited their instruments of ratification, acceptance or approval with the depositary. Thereafter, the amendment shall enter into force for any other State party on the day on which that State deposits its instrument of ratification, acceptance or approval of the amendment.

Article 18

1. Any State party may denounce this Convention by written notification to the depositary.

2. Denunciation shall take effect 180 days following the date on which notification is received by the depositary.

Article 19

The depositary shall promptly notify all States of:

(a) Each signature of this Convention;

(b) Each deposit of an instrument of ratification, acceptance, approval or accession;

(c) Any reservation or withdrawal in accordance with article 14;

(d) Any communication made by an organization in accordance with article 15, paragraph 4 (c);

(e) The entry into force of this Convention;

(f) The entry into force of any amendment to this Convention; and

(g) Any denunciation made under article 18.

Article 20

The original of this Convention, of which the _____ texts are equally authentic, shall be deposited with the _____, who shall send certified copies thereof to all States parties.

IN WITNESS WHEREOF the undersigned, being duly authorized, have signed this Convention, opened for signature at _____ on _____ 19__.